

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly closed the service record of Track Laborer R. E. Jones (System File MW-86-66/452-30-A).

(2) Mr. R. E. Jones' seniority as laborer, as of January 12, 1981, shall be restored unimpaired and shall be so listed on the seniority roster."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant suffered an on-the-job injury, a back strain, on July 27, 1984. He received medical care and was released for full duty by the Carrier's physician on August 6, 1984. Claimant sought the advice of his own physician who released him to duty effective August 20, 1984. Claimant did not return to work. Based on Claimant's seniority, his position was abolished on August 24, 1984, and he was furloughed. Thereafter, Claimant did not file a recall letter or furnish an address where he could be reached in the event that he could be recalled to service. Claimant's seniority permitted him to be recalled in October 1985, but in view of his failure to file the information indicated above, Carrier determined that his seniority was forfeited in accordance with Rule 3(g). The Organization was notified of this determination on October 28, 1985. The Claim herein was filed on May 2, 1986. In conjunction with the Claim, the Organization presented a letter from another physician employed by Claimant, who indicated that Claimant had been totally disabled from July 27, 1984, until February 17, 1985. That physician also stated that Claimant had been released to work on a light duty basis on February 18, 1985, and attempted to work from that date until March 10, 1985. According to the doctor, Claimant became totally disabled again from March 17, 1985, until December 5, 1985.

The Organization's position in essence is that Claimant received an on-duty injury and was still under doctor's care at the time the Claim was filed. The Organization believes that his name should therefore be protected and restored to the seniority roster. Carrier states that Claimant performed no service (contrary to the Organization's position) since his release to duty in August of 1984 by his own physician. Further he did not comply with the requirements of Rule 3(g) and his seniority was automatically forfeited.

Rule 3(g) provides:

"(g) When forces are increased, or in filling temporary vacancies, senior laid off employees in their respective rank, seniority group and seniority district will be given preference in employment. Employees desiring to avail themselves of this privilege and retain their seniority rights must file their name and address in writing with the appropriate division officer, with copy to District Chairman, within ten (10) calendar days of the date laid off, and renew same if address is changed during the period laid off. Failure to return to the service within ten (10) calendar days after being notified (by mail or telegram to last known address) will forfeit all seniority rights. Extension of seniority rights under this rule will expire unless returned to active service within four (4) years." (Emphasis added)

A careful examination of the record of this dispute reveals no evidence whatever that Claimant performed any service for Carrier following his accident on July 27, 1984. His own physician (the second one) indicated that he was totally disabled from the date of accident until February 1985, long after his position was abolished. It is the Board's view that the provisions of Rule 3(g) were properly applied by Carrier. It was Claimant's failure to conform to that Rule which caused him to forfeit his seniority.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.